

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
: Docket #1:20-cv-08924-
: CM
NEW YORK CITY POLICING
DURING SUMMER 2020 :
DEMONSTRATIONS :
: New York, New York
March 4, 2022
Defendant. :
: TELEPHONE CONFERENCE
----- :

PROCEEDINGS BEFORE
THE HONORABLE GABRIEL W. GORENSTEIN,
UNITED STATES MAGISTRATE JUDGE

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People of the State
of New York:

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Proceedings conducted telephonically and recorded by
electronic sound recording;
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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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THE CLERK: In the matter of In Re New York City Policing During Summer 2020 Demonstrations, 20-civ-8924.

Could we have appearances of counsel, beginning with the plaintiffs?

MS. LILLIAN MARQUEZ: Good morning, your Honor. This is Lillian Marquez of the New York State Attorney General's Office on behalf of plaintiff, People of the State of New York.

MR. WYLIE STECKLOW: Good morning, your Honor, Wylie Stecklow for the plaintiffs in the Gray matter.

MX. REMY GREEN: Good morning, Judge; Remy Green in the Sow, Hernandez and Minett matters. And for the reporter/recording, I should appear in the transcript as Mx. Green, spelled m-x-period, rather than Mr. or Ms.

MR. DANIEL R. LAMBRIGHT: Good morning, your Honor, Daniel Lambright on behalf of the Payne plaintiffs.

MR. ROBERT H. RICKNER: Good morning, your Honor. Rob Rickner on behalf of the Sierra plaintiffs.

MR. ANDREW BRIAN STOLL: And good morning, your Honor; it's Andrew Stoll on behalf of plaintiff, Cameron Yates.

MS. ALISON FRICK: Good morning, your Honor. This is Alison Frick on behalf of the Wood plaintiff.

HONORABLE GABRIEL W. GORENSTEIN (THE COURT): And

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2 for defendants?

3 MS. JENNY SUE-YA WENG: Good morning, your Honor.
4 This is Jenny Weng for the defendants.

5 MS. GENEVIEVE NELSON: Good morning, your Honor,
6 Genevieve Nelson, also for defendants.

7 MS. AMY ROBINSON: Good morning, your Honor; this
8 is Amy Robinson for the defendants.

9 THE COURT: Okay. Ms. Weng, are you speaking for
10 defendants?

11 MS. WENG: For most of it, yes, your Honor.

12 THE COURT: Okay. All right, now, you know, there
13 may be reason to hold another conference Tuesday or
14 Wednesday. I had hoped not to do that based on my own
15 schedule, but if I have to, I will.

16 So knowing that's available, Mx. Green, what do
17 you think would be good things to discuss at this
18 conference, which I think you said might be brief, if we
19 were going to be holding another one?

20 MX. GREEN: Yes, your Honor. I think the core
21 here is that -- well, there are two categories of issues,
22 one being the documents and chart issues, and the other
23 being deposition issues. Let's take them in order. As to
24 the chart, defendants didn't do the assignment. What the
25 Court ordered -- and kind of the spirit of the thing as I

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understood it -- was that we were supposed to know what documents we're getting. And rather than, you know, clarify that, the chart obfuscates it. And, worse than that, it seems to suggest that they're walking back, you know, this large array of commitments that we spent two months and dozens of hours meeting and conferring to get to.

So, you know, looking at this chart -- and I think the Court could look at it, too -- it's not possible to tell what we're getting, and it's not possible to tell what we're not getting. And so we're, you know -- I feel like we are not only not in a better place than we were on the 11th of February, but I think we're in a worse place than we were, you know, in June last year, because all it does is muddy the water; and, you know, I'm at a loss for what to do next. I think maybe the right answer is by Monday we need -- or by, you know, close of business Monday we need a chart that says in reality what we're getting.

And, you know, I don't know how the corporation counsel is operating this case. If it were me, I would probably have a Word document on my computer that listed every document request, what searches I was doing and what I'd gotten, and then, you know, what I was withholding. And so, theoretically, if they're doing this in a

reasonable way, I don't think it's much of a burden for them to say that.

What I fear is that they're not doing this in a reasonable way and that that's kind of what they were getting at last time when they objected to producing all of something and called -- and described producing all of something as setting them up to fail. What I think is they're grabbing a couple of documents and hoping we don't figure out that things are missing. And that's why we're getting so much resistance to just finding out what they are and aren't producing.

So, you know, I think that what we need is before we meet and confer again and before we have another conference is, you know, we need them to do the assignment. And I think that we should probably deal with the deposition stuff not in sequence but after we deal with this.

THE COURT: Ms. Weng?

Ms. Weng or whoever's speaking for defendant?

MS. WENG: Yes, your Honor, first I want to apologize for coughing. And so to respond to Mx. Green, my understanding is that Mx. Green's issue is they want to know what they're getting. The deadlines are March 11th and March 18th, so we're still gathering the documents that

1 the plaintiffs will be getting.

2 THE COURT: I think maybe just to be clear, if
3 they ask for a particular thing and you know you're not
4 giving them something within that category, they shouldn't
5 be finding that out on March 18th; they should find that
6 out right now. Maybe what you're telling me is we're not
7 objecting to the requests where we say we're gathering
8 documents; they're going to get everything within that
9 request. And, you know, maybe that's a reasonable way to
10 deal with it. But I just wanted to make clear if you read
11 a request and you say, you know what, for this we can give
12 them, you know, X, Y, and Z, but getting A, B, and C is too
13 burdensome, they have to know that immediately.

14 MX. GREEN: Your Honor, if I may, this is what we
15 were getting at in the letter. We got one thing
16 that's -- we got one response, responsive documents
17 previously provided, and didn't detail that they were
18 withholding anything. But those were documents that, you
19 know, based on the last conference we had, the Court
20 accepted their burden objection and said that they weren't
21 going to have to produce certain things. So if you read
22 that kind of on its face, the chart seems to suggest that
23 they're waiving those objections. And that's the real
24 problem.
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2 THE COURT: Well, I mean, that's just for one
3 particular document request. I'm trying to do a little bit
4 bigger picture on this. So I guess I was trying to get
5 Ms. Weng to react to what I just said.

6 I mean, do you understand --

7 MS. NELSON: Your Honor --

8 THE COURT: Go ahead.

9 MS. NELSON: -- this is Ms. Nelson, if I may?

10 THE COURT: Go ahead.

11 MS. NELSON: In response to your question about
12 objections and we limited the objections, my understanding
13 of what we did on the chart is we limited the objections to
14 burden or privilege as to what we weren't producing. And I
15 believe there is a column on the Chart F where we did try
16 to explain what it is that we would not be producing.

17 THE COURT: So if that's blank, that means you're
18 producing it. My point is if you're not saying that you're
19 not going to produce something within the category, that
20 means you're not objecting on burdensome or any other
21 grounds, and you're producing whatever's in the category.

22 MS. NELSON: And one of the reasons we wanted
23 Ms. Weiss here is she understands mostly how the chart was
24 finalized. But it's either in Column E or Column F where
25 we indicate that something will not be produced. For

1
2 example --

3 THE COURT: If it's blank -- Ms. Nelson, if it's
4 blank, that means it will be produced; is that right?

5 MS. NELSON: That is my understanding, your Honor,
6 which is very different from what was previously produced.
7 Our understanding and -- of what was to be done and
8 Mx. Green's complaint that she's raising is they don't know
9 what they will be getting. And so that is what we are
10 working towards for the March 11th and March 18th
11 deadlines. So if it says Previously Produced, it means
12 that they've already received those --

13 THE COURT: That's a different category --

14 MS. NELSON: I agree.

15 THE COURT: -- for a very different issue.

16 When we're talking about previously produced,
17 that's not what I'm talking about. I'm talking about
18 things that you are going to produce where you said this
19 will be produced on the 18th, and Mx. Green is saying the
20 fact that that's all you're saying, he assumes, though he's
21 skeptical, that you mean you're producing everything. And
22 Mx. Green is concerned that in fact you'll produce
23 something less than the full category because you came up
24 with some things that you decided were too burdensome or
25 couldn't be done or have some objection to, and that won't

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be discovered until the 18th. And I'm saying that's not acceptable.

MS. NELSON: I understand. Your Honor, if --

THE COURT: Okay, now, we have a separate issue, which is where you say, "Oh, we've already produced that." I haven't gotten there yet.

MS. NELSON: Okay. So we're happy to take another look at the chart, but my understanding of what is on the chart is those areas where we're raising an objection, either privilege or burden. We've put that in either Column E or Column F on the chart.

THE COURT: Okay. And if it's not there, there's no such objection, right?

MS. NELSON: Except -- your Honor, I am reluctant to speak for some of these because, again, I think Ms. Weiss can better explain for ones where the -- particularly the consolidated BRIs where the productions have been made. For a year now we've been making productions on those.

So I think the best that I can offer is I think we did this, but we will take another look at the chart, particularly Columns E and F. But I believe that's what's done.

THE COURT: Okay. We have a separate issue. And

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we're going to talk about the process here. My view is there should be an all-day, starting nine a.m., meet-and-confer Monday going through all of this so that everything can be hashed out. Is there anything preventing that?

MS. NELSON: Well, Ms. Weiss really is very sick. So I am not sure about here availability for Monday.

THE COURT: All right. I didn't know the degree of her illness. To the degree that you know she will not be available Monday?

MS. NELSON: Well, the reports I've gotten is that she is very sick. I wouldn't believe she'd be at work on Monday.

THE COURT: All right, I think we're going to have to play this by ear a little bit, Mx. Green. I know it's frustrating to you. I know you feel there should be another person from the City who can answer all these questions, but we have to deal for the moment right now with what we have. And this is apparently an extraordinary circumstances. I'm going to figure out a way to, you know, make myself available if necessary. But, I mean, you folks need to -- I mean, I think that there's things -- I think it's worth conferring on Monday even without Ms. Weiss, because I think there are things that could be raised that potentially could have answers. So who is -- Ms. Nelson,

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is it you, Ms. Weng, who is the person who is going to be most knowledgeable about this, or you'll do it together?

MS. WENG: Your Honor, I guess we'll speak internally, and if it's okay with your Honor, we'll let plaintiffs' counsels know. But I think most likely we'll be doing it together, your Honor.

MS. NELSON: My apologies, your Honor; I got cut off the conference line. I had to dial back in. This is Ms. Nelson.

THE COURT: Okay. All right, what I was saying is that you and Ms. Weng need to be available first thing Monday to go through as many issues as possible that you can deal with.

MX. GREEN: Your Honor --

MS. WENG: I apologize -- oh, I'm sorry. Before we move on, I just saw on my calendar, I'm supposed to be at a deposition all day Monday.

THE COURT: On this case?

MS. NELSON: Yes

MS. WENG: It's -- yes.

MS. NELSON: On the Yates case, your Honor.

MS. WENG: Yes.

MR. STOLL: Your Honor, this is Andrew Stoll speaking for Cameron Yates. It was my understanding

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another attorney, Giancarlo Vecciarelli, was going to be conducting that deposition.

MS. WENG: Yes. He was defending, and I was going to be on --

MS. NELSON: And, yes, (indiscernible) will be there. Miss --

MR. STOLL: I'm sorry?

MS. NELSON: -- (indiscernible) there to supervise. He is a new --

THE COURT: No, no. We need another supervisor. No, Ms. Weng has to be available Monday to discuss the discovery issues. You have no supervisor on the case.

MS. NELSON: It's Ms. Weng --

THE COURT: We have to take the --

MS. NELSON: (Indiscernible)

THE COURT: Sorry?

MS. NELSON: It's Ms. Weng or I or Ms. Weiss, your Honor.

THE COURT: You need another person. We can't -- we can't treat this case like this anymore. You have to have a lot more flexibility. You already have an attorney taking the deposition on this case. Another person can supervise.

All right, Mx. Green --

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MX. GREEN: Your Honor, I propose -- here is what I would say about this. I have a class on Monday, so I'm happy to cancel it and, you know, reschedule with my students.

THE COURT: What time's your class?

MX. GREEN: It's from 10:45 to noon. We can also take a break then from the meet-and-confer.

But the fear I have, especially without, say, something like the prophylactic order in place that we propose, is that, you know, it's not like we haven't gone line by line through every single one of these requests at a meet-and-confer before. We have. One of the problem that we have here is that they've walked all of that back in the charts. And so, you know --

THE COURT: I don't think it's all been walked back, Mx. Green. I think let's --

MX. GREEN: No, you're right. It's not -- I overstated -- a lot of it has been walked back. And --

THE COURT: I'm not even sure it's a lot. I think there's -- I think if someone could make commitments, and my problem -- the (indiscernible) question is whether Ms. Nelson can do so.

You know, I mean, I think this illness is really throwing us off; that's the problem. And, you know, if we

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have to -- I mean, I think the better thing, perhaps, Mx. Green, is just to wait a day or two, business day or two.

MX. GREEN: Yes. I think that that makes sense. I mean, the only thing we were afraid of is, you know, the issues on the back end. But --

THE COURT: No, I understand. We have to deal with the issues on the back end.

What's going on with the depositions in terms of right now how many are scheduled, unscheduled, what's going on?

MS. MARQUEZ: Your Honor, this is Lillian Marquez from the AG's office, if I may speak to that issue?

THE COURT: Go ahead.

MS. MARQUEZ: So, as of late, Chief Gallotti, who was scheduled for February 3rd and 4th, and Chief Steven Hughes, scheduled for March 3rd and March 4th, were cancelled by the City, as was Chief O'Reilly, who was set to go for March, I believe, 8th, and was actually moved to March 11. The concern that plaintiff has is that the Court ordered the defendants to schedule these higher-level depositions and to limit any last-minute schedule changes to circumstances that made participation in a deposition essentially impossible. However, the explanations that the

1 City has given, when they have given it, do not meet that
2 criteria. So for Chief Gallotti the explanation was that
3 he was participating in an NYPD-wide event on dates that
4 were not coinciding with his deposition. Apparently, the
5 cancellation was due because the City could not schedule
6 him -- excuse me -- prepare him, and perhaps because they
7 were delaying the preparation until just a day or two
8 before the scheduled depositions.
9

10 And then for Chief Steven Hughes, just on
11 March 1st this week the City, specifically, Ms. Robinson,
12 emailed plaintiffs stating simply that they needed to
13 schedule the deposition, that only upon question for a
14 reason stated we are not prepared to go forward with a two-
15 day deposition.

16 So it's plaintiff's position that these
17 explanations that a lack of preparation as a reason for
18 cancelling unilaterally and last minute these depositions
19 is not in line with the Court's order back in December. So
20 these need to be real based, and we just need to make sure
21 that we're trying to keep as many dates as we can, even
22 with the potential for an extension.

23 THE COURT: What are the numbers in terms of
24 things that have been scheduled in the future?

25 MS. MARQUEZ: So there's -- I don't have exactly

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the number -- there's about, I would say, about twenty.
But then there's a number of depositions which the City has
refused to schedule on the basis that the current schedule
does not allow it and that they will not schedule it unless
and until there is an extension. And the number of those
depositions that have not been scheduled number around 15.

THE COURT: So the current date is April 22nd for
the cutoff, is that right?

MS. ROBINSON: Correct, your Honor.

MS. MARQUEZ: I believe that's correct, your
Honor.

THE COURT: Okay. So there's twenty scheduled for
April 22nd?

MS. MARQUEZ: Approximately. And I apologize for
not having the exact number.

THE COURT: Okay. And there's another --

MS. ROBINSON: There are about fifty in total,
your Honor. This is Amy Robinson for defendants.

THE COURT: Fifteen through April 22nd?

MS. ROBINSON: No. There are five-zero in total
being taken, and before April 22nd there are 29.

THE COURT: So 29 scheduled for April 22nd?

MS. ROBINSON: Yes.

THE COURT: Okay, and you think there's an

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2 additional how many?

3 MS. MARQUEZ: That are being scheduled, your
4 Honor?

5 MS. ROBINSON: There are -- there are a total of
6 about fifty, all told.

7 THE COURT: Does that mean -- I don't know how
8 many you've already done. So are you trying to tell me
9 that there are 21 that remain to be scheduled? I'm just
10 looking for a number, if you know it.

11 MS. ROBINSON: There's 14 on the -- in terms of
12 higher-level depositions that are yet to be scheduled, not
13 including some of the ones -- so Chief Steven Hughes still
14 needs a few more dates, as well, and Gallotti. So that
15 puts it at about 16 that needs to be scheduled.

16 MS. NELSON: Your Honor, this is Ms. Nelson. I
17 think in addition to the high-level depositions, there are
18 also depositions in single matters, as well, like the Gray
19 depositions are going forward, as well as depositions in
20 Sow.

21 THE COURT: They're going forward before
22 April 22nd, or -- and they're not included in the 29 that
23 were just mentioned? Or they're included --

24 MS. NELSON: Ms. Robinson, were they included in
25 the --

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MS. ROBINSON: I'm not really sure of the -- I don't have -- I don't believe that I have any Gray plaintiffs in my list.

Your Honor, I'm doing mostly the 30(b)(6) higher-up depositions, so I'm afraid I'm looking at that list, and I don't have the total list of depositions, including, you know, the Gray plaintiffs, for example.

MS. NELSON: So the number of depositions that are proceeding --

MS. ROBINSON: Are much higher.

MS. NELSON: -- for April 22nd is higher than that number that Ms. Robinson just quoted to you.

THE COURT: Okay.

MX. GREEN: Your Honor, this is Remy Green. In Hernandez, for example, we've served notice. And they may be counting those. We haven't had a response to our notice yet, and so those aren't on the schedule. But they might be part of what they're counting. It may also be that they're counting days as opposed to deponents, and that might account for some of the discrepancies.

UNIDENTIFIED: We are not. For example, the deposition on Monday is, I think, on the Yates case.

MS. NELSON: Right. And, your Honor, just --

THE COURT: Go ahead.

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MS. NELSON: Just so that you know, before the high-ranking depositions began, plaintiffs requested and defendants agreed to two-day depositions for 14 deponents, which means 14 extra days of depositions and 14 extra days of prep. So that has gone a long way into preventing us from meeting the April 22nd deadline, as well.

THE COURT: Okay. I've already set up and allowed some slippage in that deadline, so the City should be scheduling depositions certainly through May 22nd. All right? So that should not be a basis for not scheduling a deposition, Ms. Robinson; do you understand that?

MS. ROBINSON: I missed that, your Honor. We should not be not scheduling through what date?

THE COURT: You should be scheduling through at least through May 22nd, for sure.

MS. ROBINSON: Okay. Okay. I was not aware of that. We could probably be scheduling through June 22nd, to be honest with you.

THE COURT: Well, I don't know that I'm giving you till June 22nd.

MS. ROBINSON: Understood.

THE COURT: But at least start. I mean, you can -- I assume you can do more depositions on more than one day; am I right about that?

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MS. ROBINSON: It depends on the --

THE COURT: More than one deposition on a day --

MS. ROBINSON: Right. It depends on the -- your Honor, it depends on the level of the witness. If we have two -- for example, we wouldn't necessarily double track two 30(b)(6) witnesses, but we would do a 30(b)(6) witness, and maybe the plaintiff would go or a deponent in the Gray case, for example. But we generally wouldn't have two high-ranking people going on the same day.

THE COURT: All right, let's do this. Schedule everything now, and I'll give you till June 10th to send everything in. All right?

MX. GREEN: Your Honor, if I may also just note, due in part because, as I mentioned, I think the City is preparing these witnesses too close to the deposition dates, when there is a cancellation, those dates go unused by any deposition, given the late nature of it.

THE COURT: Right.

MX. GREEN: So I'd -- I think you know where I'm going with that.

MS. ROBINSON: And, your Honor, just --

THE COURT: Well, yes, I'm trying to think -- I'm trying to think how -- first of all -- I'm sorry, was someone from the City just trying to speak?

MS. ROBINSON: Yes, your Honor. This is Amy Robinson. To begin with, we've cancelled one deposition of a higher-ranking person, which was Steven Hughes. It's my understanding that plaintiffs wanted us to push off Chief Gallotti and Deputy Commissioner Miller to later dates.

MX. GREEN: That's --

MS. ROBINSON: So I believe that is --

THE COURT: Sorry? You disagree?

MX. GREEN: I disagree. I mean, I could --

THE COURT: No, no, no. Plaintiff just disagrees?

MX. GREEN: Correct.

MS. ROBINSON: Yes. So, if I may clarify --

THE COURT: Okay, people need to identify themselves before they speak.

MS. MARQUEZ: This is Lillian Marquez again from the AG's office. If I may clarify? Chief Gallotti got an email from Ms. Robinson on the 26th of January, just short of in a week before the scheduled dates; emailed plaintiff's counsel stating that he was attending, Officer Tina Rolles on January 28th and February 2, which were not the scheduled deposition dates but stated because of his attendance on different dates, he could not attend those two scheduled dates. So Chief O'Reilly, it was again at Ms. Robinson's request without explanation despite

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2 plaintiffs' request for one, that it's been pushed back to
3 a different date. And so those are all requests from the
4 City to change these higher-level depositions.

5 MS. ROBINSON: Okay, your Honor, I misspoke. Yes,
6 Chief Gallotti was unable to attend his deposition because
7 of the murder of the two officers and their funeral
8 arrangements. I completely forgot about that. That is
9 accurate.

10 THE COURT: All right, you need, for the high-
11 level people, to have backup dates. That is not something
12 that's happened already?

13 MS. ROBINSON: Well, what we did was we had placed
14 backup dates into the calendar, but it was clogging up the
15 calendar so much before April 22nd, that plaintiff said,
16 well, let's ease off of the ultimate dates and try to get
17 these things scheduled. And so that's what we've done.

18 And with respect to Chief O'Reilly --

19 MX. GREEN: Your Honor, that's -- this is Remy
20 Green. That's also not accurate. They asked us if we
21 could do that. We did --

22 MS. ROBINSON: No, we did not.

23 MX. GREEN: -- not ask for -- Ms. Robinson, I was
24 at that meet-and-confer --

25 MS. ROBINSON: We did not -

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MX. GREEN: -- I'm happy to send the Court our notes, but that's just not true.

THE COURT: Let's figure out how to solve the problem.

What's your proposed solution on backup dates, Mx. Green or whoever's speaking, Ms. Marquez, whoever?

MS. MARQUEZ: Well, I will also note that, for instance, for Chief Hughes, who was supposed to go on yesterday and today, the plaintiffs did offer an alternative that we hold the second date, the later in time, so that defendants could at least have the Thursday to prepare their witness.

And so I think that the first step is, especially for these depositions which have two dates, and I think I just want also to clarify that point. The reason why a lot of these deponents have two dates is because they've been cross-designated as both a fact and a 30(b)(6) witness, so they got one date for each -- that we at least attempt or defendants attempt to keep the second dates and that -- I mean, the original proposal is that we keep to the Court's order from December that late scheduling -- no, conflicts should be limited to words and impossibility, not simply due to the defendants' failure to prepare their witnesses. So as a third alternative in terms of

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2 alternative dates, we have on the table a proposal to
3 defendants, which they recently objected, that we have a
4 double-tracking of certain dates so that at least we have,
5 even if we lose a day of higher-level folks, we have
6 another deposition going that day.

7 MS. ROBINSON: Your Honor, that --

8 MS. MARQUEZ: That would be a --

9 MS. ROBINSON: -- the plaintiffs' proposed double-
10 tracking, we simply cannot do that. For example, for Chief
11 Monahan, the chief of the department is going next week.
12 He requires two days of deposition, two days of prep. To
13 double-track that would reduce our staffing levels
14 extremely. It would just be --

15 THE COURT: Listen, listen, I don't know that we
16 have -- now that you have some breathing room at the other
17 end, I don't know that we have to worry about double-
18 tracking in the same way. And there has to be -- the high-
19 level people have to block out backup dates, and they have
20 to be before June 10th, and it has to be done realistically
21 so that if they all back out, they can all be done on their
22 later dates. If that requires double-tracking, so be it.
23 You must give alternate dates for all the high-level
24 people.

25 You know, the odds are if you tell them the

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seriousness of this and if you prep them a week in advance and not two days in advance, it's not going to be an issue. But you absolutely must have backup dates that you inform the other side of, saying, "Here's the date for this person. And if that date doesn't work, here's the date or dates that they're going to do it, if for some reason the first one doesn't work." And if the first one doesn't work, I'm trying to think, this has got to be, you know, an emergent project like attending a funeral, not like attending a conference. It's got to be something that is of an emergent, emergency nature.

And I'm trying to think how -- I think that's going to have to be expressed in a representation from the attorney that describes in detail what the problem is and why this person is completely prevented from attending the deposition on that date. And preparation is not going to be an excuse. It's going to be a problem of that person. Your preparation's going to have to happen in advance. And the plaintiffs should feel free to test this deposition under oath if they have any doubts when the deposition ultimately happens. So make sure your deponents tell you very accurately what the problem is.

MS. ROBINSON: I understand -- this is Amy Robinson, your Honor. I understand. Understood. And I'm

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just a little concerned that with backup dates we could --
it would be difficult --

THE COURT: You could end up in double-tracking, I
don't know. But you're going to have to get another
attorney on the case. I don't know what else to tell you.
I hope you will impress upon your deponents how important
it is to appear for their date.

MS. ROBINSON: I will in fact do that, your Honor.
My only concern is the June 10th dates.

MX. GREEN: Your Honor, if I may? I suspect not
everybody has seen this yet. And as we're thinking about
June 10th, the Second Circuit just in part reversed Judge
McMahon's decision to deny intervention to the FDA. And I
suspect that that's going to affect where our end date is
at the end of the day because we're going to have a bunch
of new -- or well, we're going to have one new party in a
sense who is starting from square one on discovery. And,
you know, I'm not sure how realistic keeping the time
schedule is going to be, given that.

THE COURT: Breaking news. I mean, I can't see
that we should halt depositions for this. I mean, maybe
they have some additional deponents or something.

MX. GREEN: To be clear, yes. I don't think that
we should halt depositions in any way. I just -- I suspect

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2 that's just going to, given that we're going to have new
3 document requests sent in all directions and then they're
4 going to have whoever they want to depose, that the
5 ultimate end date is going to probably have a lot more play
6 on it than we were all thinking. And maybe that means we
7 do have a little more breathing room than we thought to
8 kind of weave all of that together, not that we would stop
9 taking depositions, but that, you know, for the depositions
10 that haven't been scheduled yet maybe there's a little more
11 room, and for making sure that we do have these backup
12 dates, we have a little more room.

13 MS. NELSON: Your Honor, this is Ms. Nelson. I
14 don't believe that just document requests are going to be
15 impacted by the addition of another party. But to the
16 extent they also want to depose some of these high-level
17 officials, I don't know that it would be efficient to go
18 forward with some of them now just so that we have to bring
19 them back at a later date. We already have difficulty
20 scheduling them now.

21 THE COURT: All right, listen, I have to digest
22 this news. I don't want to make any decisions right now on
23 it. I don't want to -- let's digest this all. Proceed as
24 we've been proceeding. Everything I've just ordered is the
25 case: same backup dates, June 10th for the moment. If you

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have a proposal for what we should do next, I think you should talk about this and --

MS. NELSON: Your Honor, this is Ms. Nelson again. My apologies. So the deposition, my understanding is Chief Monahan is going to be deposed next week. We should proceed with his deposition.

THE COURT: I mean, you know, the mandate doesn't even issue for 45 days. I guess we could -- I'm trying to think procedurally whether they can be instantly inserted in the case.

MS. MARQUEZ: If I may, your Honor? This is Lillian Marquez again from the AG's office --

THE COURT: Folks, hold on a second, I want to look at this.

(Brief silence.)

THE COURT: Folks, this is Judge Gorenstein. Are you all there? Mx. Green?

MX. GREEN: Yes, your Honor.

UNIDENTIFIED: Yes, Judge.

THE COURT: And Ms. Weng and everyone else.

Okay, I think we have to halt depositions of higher-level people and that that could, you know, reasonably expect -- for which we could reasonably expect the new plaintiffs, the PBA, to need to participate in the

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depositions. I think we have to do that. I'm going to issue an order that allows them to start participating now. And I'm just trying to think what I should tell them. I mean, they need to be provided with all document discovery produced to date. Who is in the best position to do that for them? Do you have some platform that has it all that it can be transmitted from that platform? I don't want to put you on the spot, but someone has to figure out how to do that.

Hello?

MS. NELSON: Your Honor, this is Ms. Nelson. I think we're -- I'm reluctant to speak for plaintiff, but I think I'm right -- I think we all feel a little put on the spot, and maybe we can think about how best to do that, and we can advise the Court.

THE COURT: And then we need -- you know, I'm going to give them a deadline. It's hard to believe there's any discovery request they need that hasn't already been made, but I'm going to give a deadline to make such requests, you know, a quick deadline. And, you know, we shouldn't hold up depositions of, you know, that don't involve -- you know, the --

MS. NELSON: The other depositions --

MX. GREEN: Your Honor --

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THE COURT: -- the individual kind of depositions.
Go ahead, Mx. Green.

MX. GREEN: My memory is that they have not -- and I know that Courts can excuse this, and I think the Second Circuit did, having not spent hours on the order -- I don't think they filed an answer, and they propose to intervene as defendants, so, you know, I think there are certainly discovery requests we would intend to serve on them, especially defendants, depending on what affirmative defenses they raise and what they deny. I think, you know, we should just all be thinking about the fact -- unless I'm completely wrong, and someone please correct me -- we don't have a pleading from them yet. And that obviously affects the shape of what discovery will follow.

THE COURT: So I -- all right, so we need to get them to file their answer --

MX. GREEN: Right.

THE COURT: -- (indiscernible) within 21 days or something.

All right, file their answer. And the discovery requests probably the same date.

MS. MARQUEZ: Your Honor, this is Lillian Marquez again from the AG, if I may?

THE COURT: Yes.

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MS. MARQUEZ: First, I just want to make sure we're all clear on what it means for higher-level depositions. So we have, of course, a lot of cross-designees for former chiefs -- or excuse me -- for current high-level officers as being both fact and 30(b)(6). And then, of course, we have a slate of folks who are simply fact and a lot of whom are actually retired now. And so we just want a clarification. We would propose that only the 30(b)(6) depositions be delayed so that the intervenors can join but that we be able to move forward both with the fact-only depositions, whether they be high level or line level.

MS. NELSON: Your Honor --

THE COURT: Yes.

MS. NELSON: -- this is Ms. Nelson. I think in theory that sounds practical, but it might not be that simple to -- for some of these witnesses to parse out what is the 30(b)(6) portion and what is the fact portion, particularly for these high-level officials that --

THE COURT: Yes, I think I'm going to have to defer to some degree with the City on this because they're the ones who are going to have to bring them back. That's the risk here.

MS. MARQUEZ: I could respond to that, your Honor.

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Again, this is Lillian Marquez. Actually, that's what they've been doing to date. So we had agreed to have distinct days or distinct sections of depositions, one section being designated as 30(b)(6) and the second being designated as fact. And then we have done that with Chief Dowling already, so that is actually something the City has agreed is a possible and has agreed that that's how we would move forward. So I disagree with that characterization that witnesses cannot distinguish or find it hard to prepare --

THE COURT: How many high-level people are both fact and 30(b)(6)?

MS. MARQUEZ: Twelve.

THE COURT: Yes, if the City wants to put them off, I think we should just put them off. I mean, I'm prepared to have these people, you know, jump into this pretty quickly, but there's going to be a delay. And I --

MS. MARQUEZ: Just as -- oh, sorry.

THE COURT: Go ahead.

MS. MARQUEZ: I'm just looking at the schedule right now, and I only see five cross-designees. And there are some high level that are not 30(b)(6) at all, for instance, the named defendants, Terence Monahan and De Blasio.

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MS. NELSON: And then we have Steven Hughes, David Miller, James Kahn, Dean --

THE COURT: Okay. Folks, just because someone is fact doesn't mean that these new plaintiffs might not need to depose them. That's the test. These people need to depose them as fact witnesses. It's unreasonable to expect the City to have them come twice. That's the test.

We're not going to solve this now. There's going to have to be some delay in the deponents for whom the PBA and their claims, which apparently are going to be limited to injunctive relief. You know, to the extent they're going to be able to say that they should have discovery from a particular deponent on those topics, if that's reasonable expectable, then we have to put these off temporarily. Anyone else should go forward.

MS. MARQUEZ: This is Lillian Marquez again. Does your Honor mean to delay also the line-level officers that have yet to be --

THE COURT: No, no, no, that's my point.

MS. MARQUEZ: Okay.

THE COURT: Those are not people for whom, you know, injunctive relief -- they're not going to have evidence with respect to injunctive relief, it seems to me. All right --

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MX. GREEN: Your Honor, it seems then, you know, in some ways maybe this is a blessing in disguise in that it lets us focus on making sure that before all of these depositions we actually get document discovery as close to done as we can. And so maybe we should turn back to that and kind of --

THE COURT: Yes, I agree.

MX. GREEN: -- figure out how we're resolving those issues in the interim.

THE COURT: Okay. I think we have to accept that Ms. Weiss's health is, unfortunately for her and -- obviously -- but in terms of everything else, that's something we have to consider in terms of what's happening next. So let's see --

MX. GREEN: Your Honor --

THE COURT: Hold on, hold on. Let's see how soon she can be involved.

In the meantime, Ms. Weng and Ms. Nelson, I mean, I don't know -- well, go ahead, Mx. Green, what's your proposal?

MX. GREEN: Yeah. So I think that the -- our view is that the chart wasn't done in the way that is particularly helpful. And maybe with Ms. Weiss out and, you know, call it the little extra breathing room we have,

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another round of doing it makes sense where what they tell us is, you know, to be clear, right, what are we going to get, what searches are they doing to get us that, what are they withholding. And I think "withholding" should cover both what are they withholding on the new searches, but also if they withheld something or didn't search for something the first time around, given that we have, you know, a live dispute about the adequacy of their previous searches and their previous withholdings and we found things, big categories of things that are missing, right, so that what they tell us they're withholding has to be what they've withheld in toto. And if we can get a chart that actually covers all of that, I think by the time Ms. Weiss is better, then perhaps we can have a very productive meet-and-confer where we're actually talking about what we're getting and what we're not getting, not what information is hiding behind the words Documents To Be Produced.

MS. NELSON: Your Honor --

THE COURT: So -- yes, go ahead.

MS. NELSON: This is Ms. Nelson. I just want to be clear it's what we are going to be producing. My understanding is that document production has been going on in this case for a year. It's not what was previously

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produced but what we are going to produce and whether we have any objections and are withholding on those objections. And I think that can be on the chart.

MX. GREEN: Your Honor --

THE COURT: Just so we're clear, in some cases you said, "See our prior production." So -- and without any other explanation -- so for those categories they don't know if -- you know, imagine if some very narrow --

MS. NELSON: Again --

THE COURT: Let me finish my sentence.

Imagine if some very narrow categories produce all documents -- which I know is not even on the list -- but produce all documents for Jane Doe's arrest on June 5th, okay? No produce the arrest reports for Jane Doe's -- or arrest documents for Jane Doe's arrest on June 5th. Okay. They need to know what it is you're produce -- that sentence encompasses A through J. You know, it could mean a notebook, it could mean the online sheet, whatever they are.

MX. GREEN: Yes.

THE COURT: If you are agreeing to produce everything, then that's fine, but what you need to do is to in some way indicate what your search involved. So you should say, "We're producing the online arrest reports, the

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2 notebook page of that date," and so forth. You should
3 explain what it is you're producing. Or you could say,
4 "We're relying on the email search, you know, the search
5 terms. That's whatever it is, and that's what we think is
6 all we have to do for this." You have to express what it
7 is that is being produced. And if there's something you
8 know is not being produced that's within that category, you
9 have to say that, as well. Do you understand what I'm
10 saying?

11 MS. NELSON: I want to make sure I understand,
12 your Honor. So the request is there. We will say what we
13 will be producing in terms of --

14 THE COURT: Yes, and that's -- or if you say, "We
15 already produced it," say what it is you have produced.

16 MS. NELSON: Well, I think that's where the
17 misunderstanding might have come in with the chart, your
18 Honor. To the extent we're talking about going back
19 through a year's worth of production, that's where the
20 Previously Produced was indicated on the chart.

21 THE COURT: Well, how are they supposed to know
22 what it is? How do you know what it is? How do you know
23 it's been previously produced?

24 MS. NELSON: Again, I think we need Ms. Weiss's
25 input there, but my understanding is that's the way the

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chart was prepared. So for --

THE COURT: I understand that, and I'm trying to say why is it insufficient if you just say --

MS. NELSON: Okay, your Honor --

THE COURT: -- In response to the request Previously Produced, they need some hint about what you're talking about, because they don't think they have -- in some cases they don't think they have it.

MS. NELSON: We will try to do that for --

THE COURT: I'm not saying you have to come up with Bates numbers. There could be some other reasonable way you could express --

MS. NELSON: Okay.

THE COURT: -- what production you're referring to.

MS. NELSON: Okay.

THE COURT: For example, in an email search you could say, "We did an email search with everything with this term, and therefore, if there was anything, it's that." I'm not saying you have to go and find those; you could just say, "We thought our email thing was sufficient to produce all that." There may be 100 other examples of what you could say that didn't actually require Bates numbers. I mean, you could say, "We produced all IAD

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documents with respect to this set of people, and therefore, we think that's sufficient to comply with this document request; and, you know, that was previously produced." And I'm not saying you have to go through and find the Bates numbers for them.

MS. NELSON: Understood. So, your Honor --

THE COURT: But there has to be some identification.

MS. NELSON: Right. I just want to repeat what I --

MX. GREEN: Your Honor --

MS. NELSON: -- think your instructions --

THE COURT: Hold on. Let's hear from Mx. Green before you repeat it.

MX. GREEN: Here's the fundamental problem I see with that. We have -- we've made a bunch of motions at this point on the issue that in essence -- and this is what the metadata on the document says -- and this has been confirmed by NYPD reps at meet-and-confers -- what they did for the vast majority of document requests and documents produced on July 31st is they took what they gave the OIG and the AG in the investigation and just reproduced it. And they have spent a couple of months rereviewing it, apparently redacting it in a different way this time around

1 and then reproducing it. And so, for example, the Court
2 mentioned IAB documents. IAB documents cut off as of the
3 date that they produce to the OAG and OIG. Right? And the
4 reason it cuts off at that date is because they couldn't
5 have produced future documents at that point.

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7 And so one of the biggest issues here -- and we've
8 made motions on this, and we've met and conferred for
9 dozens of hours on it -- is that when they say Previously
10 Produced, they are not telling us what they withheld on the
11 basis that it happens that it wasn't what was collected in
12 the OAG and OIG investigation. And we know this because
13 Ms. Fitzpatrick, who is the head --

14 THE COURT: I lost -- I lost the last sentence. I
15 didn't understand what you just said.

16 MX. GREEN: Okay. Sorry. And we know this
17 because the head attorney at -- who does discovery at the
18 NYPD, who is Bridget Fitzpatrick, said that what happened
19 when they were collecting documents is a lot of the
20 precincts they sent requests to said, "Isn't this just the
21 same request we got a year ago?" And what Ms. Fitzpatrick
22 said to them was, "Yes, just produce it again."

23 And, of course, it's not the same requests, and
24 it's not the same documents. And that cuts it off as of a
25 certain date. So there are already huge categories that are

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missing. And what's working behind the "we already produced it" representation is whatever differences there were in the requests between the AG requests and our requests in the consolidated cases, what's working behind there is, you know, that entire date range after those requests in 2020. And, of course, there are many more documents that were generated after that, and many of the protests at issue here were after that investigation got its production. And so, you know, that's the kind of stuff we're missing and that's hiding behind the Documents Previously Produced.

MS. NELSON: Your Honor --

THE COURT: Your solution is what?

MX. GREEN: My solution is I think that, you know, they should say what they have produced, maybe by Bates number, because I don't see another way to do it where we can check their work conveniently. And when they say what they're withholding, I think they need to say, you know, what they've withheld in toto, not just what they're withholding from their new searches but what they previously withheld. And I don't think that should be that hard to generate if they've kept good records of what they've searched for.

MS. NELSON: Your Honor, that is not my

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understanding of what the Court instructed us to do. This is a different request that is being made now. What we're now asked to do is go through the previous production, and Mx. Green now wants us to give Bates numbers for every one of those requests. That is not what the judge ordered us to do.

THE COURT: Well, it has to be identified. You can't just say "previously produced." You have to say what it -- how on earth are they supposed to know what you would tell, what you're produced, what it is? So you're going to have to figure out some ways. It's date numbers, it's Bates numbers; if it's something else, it's something else.

MS. NELSON: Okay, we will --

MX. GREEN: And, to be clear, I'm not asserting that the Court previously ordered this. I'm saying this is how I think we fix the problem.

THE COURT: I mean, you have to say -- if someone gives you a document request, you have -- I mean, you have to say it was produced -- you have to identify in some way where it is. But very importantly, you have to say what wasn't produced within that category --

MS. NELSON: Yes. And I -- I think we've tried to do that with the chart, your Honor, for the items that we are going to produce. Right? So I noted that we had

Column B -- forgive me, not B -- E and F, where we tried to indicate there whether or not -- and your Honor was very precise about the type of objections that we could raise, so we didn't raise all objections; we wanted this to be very clean. It is as to -- where we're withholding as to privilege or burden and then explain why. And that's what we did for the chart. We didn't put all objections on there. That wasn't what the Court ordered. In fact, that's what the Court cautioned against.

MX. GREEN: Your Honor, may I just ask a clarification, because I do not understand the chart? Does that mean that there are relevance withholdings that are not reflected on the chart?

MS. NELSON: My apologies. If there was a strong relevance objection, I believe we put it on there; but we didn't put it on there for all the ones that we thought might not be relevant but we're going to produce something. That's my understanding of the chart, and my apologies, I cannot speak further to the contents of the chart beyond that.

THE COURT: You're going to have to talk to Ms. Weiss. I mean, I don't -- the chart has to indicate what it is within a request that you're producing and that you're not producing.

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MS. NELSON: Understood.

THE COURT: And if you're not producing something,
then you have to say what the burden --

MS. NELSON: Right.

THE COURT: -- and say why you're not producing
it. And, I mean, if you think it's irrelevant, I think you
have to say that, too, if there's some piece of it that's
irrelevant.

MS. NELSON: I think I misspoke, your Honor. I
think that is part of the chart. It's privilege, burden or
relevance. We did not --

THE COURT: I don't think you have any other
objection.

MS. NELSON: Well, we didn't include any others
because we wanted --

THE COURT: No, I don't think you have --

MS. NELSON: -- to (indiscernible).

THE COURT: -- (indiscernible) what is there?

MS. NELSON: Understood. I just wanted you to
know that we tried to follow the instructions that were
given by making the chart clean and only including those
three types of objection.

THE COURT: Well, if there's other objections,
we'd better know about them.

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MS. NELSON: I --

THE COURT: I don't recall telling you that you could have secret objections.

MS. NELSON: No, not secret objections, your Honor. I think your instruction was only include the objections where you are withholding something. And so there are other objections that you would normally make under Rule 33 in --

THE COURT: In other words -- right, yes, in other words, if you made some objection but you're producing it anyway, I agree, don't waste our time with that.

MS. NELSON: Exactly.

THE COURT: That's all we're talking about. Yes, that's fine. But if you're withholding something, then, yes, you have to explain what you're withholding and why. You have to describe it and you have to say why.

MS. NELSON: But I think we did that --

MX. GREEN: And, your Honor, if I --

MS. NELSON: -- for most of the chart. We will look at the chart again, your Honor, with those instructions in mind.

MX. GREEN: And, your Honor, I suppose let me do two things, one being -- and if -- it's not just withholding, right? If they limited the scope of their

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search on the basis of some objection that's not privilege or burden, then we need to know about that, too, right? Because then -- and I know there are documents that fit this --

THE COURT: Say that again. Say it again. Say what you said again. I'm sorry, "scope"? Say it again.

MX. GREEN: If, for example, they didn't go search in someplace because, I don't know, maybe they didn't think they were going to find relevant documents there -- that's probably the wrong one -- but we know that they limited their search such that they either didn't give us a privilege log or identify as withholding. For example, the draft After Action Report from the 2020 protest, we know that this document exists. It's not on any privilege log, and nothing states they're withholding it. We know it exists because it's mentioned in dozens of interviews -- maybe not dozens, but a couple of interviews. And so, you know, it seems to us that there are also limitations that we don't know about based on where they searched. And so the chart, I think, needs to say what were the limitations on your searches as well that meant that you didn't find documents?

THE COURT: Well, to the extent you're expressing a burden of doing everything within the document request,

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then that is going to be described when you say it's too burdensome. You can't just say it's too burdensome; you say -- you're going to have to say, "Well, it's too burdensome to search in this particular place, so we didn't do that; instead, here's what we did."

MS. NELSON: Your Honor, I don't understand about -- I don't understand the explanation about searching in a particular place. If the document request is for a particular thing, let's say an IAB file, we are going to search those databases that would have that information. Maybe I'm missing something --

THE COURT: Okay, if there's something that -- I say we can't do this without specific requests -- if the request asks for a particular thing and it's very easy for you to get this particular thing by searching a particular way but there's a possibility that something that fits within that category could be buried under someone's desk or in a warehouse and you have no idea how to find it and you say, "Well, that -- you know, it's possible there's documents there that are nonduplicative that are also responsive to the request, it's not worth searching," you have to explain what it is that you're not searching for that's within that request.

MS. NELSON: And I think that's what --

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THE COURT: You know what's non -- if you know there's some nonduplicative thing within a request that you're not searching for and it's clearly called for by the request, you have to say, "I didn't search the warehouse because that would be too much."

MS. NELSON: Right. So --

MX. GREEN: And, your Honor, let me just put something concrete on this, because I think you're right; it's hard to talk about it abstractly. Let's talk about IAB reports. We don't have IAB reports after a particular date. That is, in our understanding, because they just reproduced whatever was produced to the AG and OIG. But there's nothing in the chart and there's nothing in any objection that states that they are limiting their search to documents generated by the IAB before a certain date. All it says is Documents Previously Produced --

MS. NELSON: Understood.

MX. GREEN: -- but this is something, you know, we raised in the motion --

THE COURT: Okay. Do you see this problem, Ms. Nelson?

MS. NELSON: I understand that objection that Mx. Green just raised.

THE COURT: Okay. So that has to be clarified on

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the chart, what you're doing, what you're not going to do.

MX. GREEN: And, your Honor, this is the first consolidated protest request motion that we've made, I think three times now, which is, you know, we sent them that letter last year in September listing all the categories of documents we were missing --

THE COURT: Okay. Mx. Green, we've got to -- right now I want to just figure out what to do next.

MS. NELSON: I just want to -- I'm looking at the chart right now, and I believe what your Honor is asking for and what Mx. Green just raised is on the chart. She's talking about IAB files, and we have burden argument we put in -- our objection is that producing the document is unduly burdensome, and then we have an explanation as to the burden.

MX. GREEN: Which -- sorry, let's all look at the same place on the chart. Which request are you looking --

MS. NELSON: I think it's 18, Row 18, Document Request Number 17. I don't think we need to go into all of it, and again, I --

MX. GREEN: But the --

MS. NELSON: -- apologize -- I'm going to apologize because my knowledge of the chart is

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limited. I'm just pointing out this one particular item.

MX. GREEN: I mean, 18 is Academy Transcripts.

MS. NELSON: Document Request Number 17. I'm at Row 18.

MX. GREEN: That's not the request we're talking about.

MS. NELSON: I didn't say it was the request you're talking about. I'm talking about IAB investigation files.

MX. GREEN: Right. But we're talking IAB requests, investigation files that were due July 31st last year, not a new request.

MS. NELSON: What I'm trying to point -- this is not a new request, and what I'm trying to point out is to the extent that there is an objection and a burden, it has been explained.

THE COURT: Okay, folks, listen. Mx. Green, I'd like you to take -- to continue discussing this with Ms. Nelson offline. Your goal is to get a redone chart as soon as you can. I think it may be helpful to have Ms. Weiss involved if we're going to have this be fruitful. We're --

MS. NELSON: I agree.

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2 THE COURT: -- going to have to have some delay
3 due to the intervenors. So why don't you take it day
4 by day next week and see if you can figure out a way
5 to put this together and have your discussion, then
6 bring me any disputes. I just don't think we can
7 solve this right now.

8 MX. GREEN: All right, your Honor. I suppose
9 the thing I will ask for, then, is what -- can we say
10 that one of the things that we need to figure out is
11 how they're going to identify documents for us. And
12 so, you know, if it's not Bates numbers, we need an
13 agreed-upon way to identify them.

14 THE COURT: Yes. You need to talk to Ms. Weiss
15 and explain to her the problem with all those
16 statements. I agree there's a problem.

17 MX. GREEN: Okay. And so just so that we're
18 all super-clear, because I had thought we were at
19 least somewhat clear before, what the new chart needs
20 to do is across all of the requests and all of the
21 productions state what it is they think we have and
22 what it is they think they're going to give us and
23 what it is that across time they have withheld; is
24 that right?

25 THE COURT: They have to state what they have

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2 withheld or plan to withhold, yes.

3 MX. GREEN: Yes. Okay. Great. I think we can
4 do that.

5 THE COURT: Well, it's the City who has to do
6 it.

7 Okay, all right, so I'll wait to hear from you
8 as to, you know, what the next thing is. In the
9 meantime, an order will be issued about the
10 intervenors.

11 MS. NELSON: Thank you, your Honor.

12 MS. MARQUEZ: Your Honor -- your Honor, this is
13 Lillian Marquez from the AG's Office. If I may make one
14 last request regarding the depositions with regard to the
15 line-level officers? So there remains to be scheduled
16 about five line-level officers. To be most efficient about
17 our time in the midst of this sort of delay for the higher
18 levels, I'd ask that we have a deadline for the City to
19 propose dates within the current schedule to schedule those
20 unscheduled line officers and that it be made clear that,
21 as with the higher levels, that lack of preparation is not
22 a reason to cancel, rather it should just be limited to
23 emergent circumstances, as you earlier explained.

24 THE COURT: I think my order about emergent
25 circumstances related to the high-level people who I

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assumed were a lot harder to reschedule than line officers.
So I think you're asking for something new right now. Yes,
my order was about high-level people.

MS. MARQUEZ: If we could get a date to schedule
these unscheduled line officers, given that we --

THE COURT: Yes. Let's -- any problem getting
them dates in the next week to do this?

MS. NELSON: We can -- I'll defer to Ms. Robinson,
but I think we can get them done by next -- get schedule
dates by next Friday.

THE COURT: Yes. Schedule dates --

MS. ROBINSON: Yes, your Honor. This is Amy
Robinson --

THE COURT: Ms. Robinson, any problem with that?

MS. ROBINSON: I don't see any problem with that,
your Honor.

MS. NELSON: Your Honor, I would also like if
Ms. Marquez can send me the name of those five officers
that she believes --

THE COURT: I don't think you need me to order
that. I'm sure you can talk to her directly about that.

MS. ROBINSON: Thank you, your Honor.

MS. MARQUEZ: And I'll just correct my -- this is
Lillian Marquez again -- I'll just correct myself. It's

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five unscheduled for the ones that were in most of the consolidated actions, but then there were a few that joined in later in time. So Hernandez and Gray may still have some that are unscheduled. But we could speak offline. I just want to put that on the Court's radar.

THE COURT: All right.

MX. GREEN: And before we go, if we are wrapped with the -- oh, sorry, I assume you were about to say something on that.

THE COURT: No, go ahead. What else?

MX. GREEN: Before we are wrapped on that, I think, you know, we kind of derailed from dealing with the staffing issue when we discussed the Second Circuit's mandate. But, you know, I think the staffing issue is plugging into every single issue here. And, you know, it plugged into the motion that we filed this morning because the defendants missed the two very clear deadlines to produce the Mullens and Payne documents that the Court ordered. And so, you know, I think -- I don't know how we deal with it, but I think we should have something on staffing.

THE COURT: I'm not ready to deal with staffing right now. Ms. Weng, any idea why you violated my order? Did you violate my order -- not you, the City?

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MS. WENG: I'm not sure I can speak to this because I'm -- actually wasn't involved in that, so I apologize, your Honor.

THE COURT: Anyone here know about it from the defendants?

MS. NELSON: I cannot speak to it, either, your Honor. Apologies.

THE COURT: I mean, it's pretty serious. I mean, I --

MS. NELSON: I understand. But we really tried to staff the case and so there are assignments are given to different individuals --

THE COURT: Who was in charge of this?

MS. NELSON: I --

THE COURT: Who's in charge of making sure my order was complied with --

MS. NELSON: Well, the entire team, your Honor, should be. But as to Payne, I just don't recall who the attorney is that's assigned to that matter.

THE COURT: And it's not someone on the call right now?

MS. NELSON: It's not Ms. Weng or I, no.

THE COURT: Or Ms. Robinson?

MS. NELSON: Or Ms. Robinson.

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2 THE COURT: All right, well, you'd best respond to
3 this letter within the two business days, which is Tuesday.
4 And whatever your response is, I'd like to be -- who's the
5 head of your unit?

6 MS. NELSON: The head of the Special Federal
7 Litigation Unit?

8 THE COURT: Yes.

9 MS. NELSON: Patricia Miller.

10 THE COURT: Ms. Miller should sign the letter in
11 addition to whoever else signs it. Got it?

12 MS. NELSON: Got it.

13 THE COURT: Okay. All right, Mx. Green, anything
14 else for now?

15 MX. GREEN: No. We will confer next week, and I'm
16 sure we'll either send you opposing letters or a letter
17 telling you what we think we should do with the chart.

18 THE COURT: Okay. All right. Thank you,
19 everyone. Good-bye.

20 (Whereupon, the matter is recessed.)
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C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of In Re: New York City Policing During Summer 2020 Demonstrations, Docket #20-cv-08924-CM, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: March 4, 2022